

BOARD OF APPEALS CASE NO. 4918

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BEFORE THE

APPLICANT: Maurice L. Bishop
(Tabernacle Mt. Zion United Methodist Church)

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ZONING HEARING EXAMINER

REQUEST: Expansion of non-conforming
use to enlarge the existing cemetery;

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OF HARFORD COUNTY

1900 Connolly Road, Fallston

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Hearing Advertised

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Aegis: 5/5/99 & 5/12/99

HEARING DATE: June 23, 1999

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Record: 5/7/99 & 5/14/99

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ZONING HEARING EXAMINER'S DECISION

The Applicant is Maurice Bishop. The Applicant filed a request on behalf of Tabernacle Mt. Zion United Methodist Church for an expansion of a non-conforming use, pursuant to Section 267-21, and a variance to Section 267-34(C), Table II, of the Harford County Code, to enlarge an existing cemetery and a reduction in the required front and side yard setbacks.

The subject parcel is located at 1900 Connolly Road in the Third Election District. The parcel is identified as Parcel No. 88, in Grid 1-D, on Tax Map 55. The parcel contains 1 acre, more or less, all of which is zoned Agricultural.

Mr. Bradford Edwards appeared and testified that he is Chairman of the Financial Committee of the Tabernacle Mt. Zion United Methodist Church. Mr. Edwards said that the subject parcel contains approximately 1 acre and that the Church was originally established on the parcel in 1853. The witness said the property is improved by a church, a separate community hall, the cemetery and paved parking lot. Mr. Edwards said that the Church is requesting an expansion of the non-conforming use to increase the size of the cemetery. The witness said that if the requested is approved, the Church would maintain a 25 foot setback from the center of Connolly Road and a 20 foot setback from an adjacent residential lot. The witness said that the use on the property would not change to a more intensive use and that the enlargement of the cemetery would not exceed 50% of the gross square footage of the cemetery in use at the time of creation of the non-conformity, the enlargement or extension would not violate coverage regulations for the district, and the enlargement would not adversely effect adjacent properties, traffic patterns, or surrounding neighborhood.

Case No. 4818 - Maurice Bishop/Tabernacle Mt. Zion Church

Mr. Edwards went on to testify that there is no other area on the site for expansion of the cemetery due to woodland, poor soil conditions, wetlands and springs located on the property. The witness also testified he did not feel the variance would be substantially detrimental to adjacent properties or materially impair the purpose of the Code because no protestants appeared in opposition to the request and he introduced as Petitioner's Exhibit No. 2, a letter from David M. Wallis, an adjoining property owner, who indicated that he was not opposed to the Applicant's request.

No protestants appeared in opposition to the Applicant's request and the Staff Report recommends conditional approval and provides:

"The Department of Planning and Zoning is of the opinion that the request should have little or no adverse impacts on The intent of the Code and/or the adjoining residential uses. The existing Church and cemetery has existed for almost 150 years without creating a hardship on the community."

CONCLUSION:

The Applicant is requesting an expansion of a non-conforming use, pursuant to Section 267-21, and a variance to Section 267-34(C), Table II, of the Harford County Code, which requires a 50 foot setback from the front property line and a 50 foot setback from an adjacent residential lot.

Section 267-21 provides:

Enlargement or extension of nonconforming buildings, structures or uses. The Board may authorize the extension or enlargement of a nonconforming use, with or without conditions, provided that:

- A. The proposed extension or enlargement does not change to a less-restricted and more-intense use.
- B. The enlargement or extension does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the nonconformity.
- C. The enlargement or extension does not violate the height or coverage regulations for the district.

Case No. 4818 - Maurice Bishop/Tabernacle Mt. Zion Church

- D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.**
- E. The limitations, guides and standards set forth in §267-9(I), Limitations, guides and standards, are considered by the Board.**

Section 267-34(C) requires a 50 foot front yard setback and a 50 foot setback from an adjacent residential lot. The Applicant is proposing a 25 foot setback from the center of Connolly Road and a 20 foot setback from the adjacent residential lot.

The evidence introduced by the Applicant indicates that the expansion will not change the use to a more intense use, nor will the increase in the size of the cemetery exceed 50% of the gross square footage in use at the time of the creation of the non-conformity. Likewise, the enlargement will not violate the height or coverage requirements for the district, nor adversely adjacent properties, traffic patterns, or the surrounding neighborhood. No evidence was introduced that the Applicant's request will adversely impact the "Limitations, Guides and Standards" as set forth in Section 267-9(I).


The testimony also indicates that the subject property is unique due to the existence of springs, wetlands and other topographic conditions on the parcel which will justify reduction of the required setbacks. No evidence was introduced that the variance will be substantially detrimental to adjacent properties or materially impair the purpose of the Code, and the adjoining property owner who would be most effected by the Applicant's request submitted a letter indicating that he was not opposed to the request.

Case No. 4818 - Maurice Bishop/Tabernacle Mt. Zion Church

It is the recommendation of the Hearing Examiner that the requested expansion be approved, as well as the requested area variances to reduce the setbacks. The expansion and variance shall be subject to the following conditions:

1. The Applicant obtain all necessary permits and approvals to clear the trees for the proposed expansion and for the fence to enclose the existing and proposed cemetery.
2. The expanded cemetery shall be no closer to the road than the existing non-conforming cemetery.
3. Within the 20 foot setback, the Applicant retain the existing trees or replant screening to buffer the proposal from the adjacent residential use.

Date JULY 20, 1999



L. A. Hinderhofer
Zoning Hearing Examiner